

ORIGINAL

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ACORDIA NORTHWEST INC.

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JAN 09 2006

at 3 o'clock and 20 min. P.M.
SUE BEITIA, CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

PARADISE CRUISE LIMITED,

Plaintiff,

v.

MICHAEL ELSE AND COMPANY
LTD.; GREAT LAKES
REINSURANCE (UK) PLC, dba
TRANSMARINE; LLOYD'S OF
LONDON; LLOYD'S
UNDERWRITERS; ACORDIA
NORTHWEST, INC; AON RISK
SERVICES, INC. OF OHIO,

Defendants.

AON RISK SERVICES, INC. OF OHIO,

Cross-Complainant,

v.

MICHAEL ELSE AND COMPANY
LTD.; GREAT LAKES
REINSURANCE (UK) PLC, dba
TRANSMARINE, LLOYD'S OF
LONDON, LLOYD'S
UNDERWRITERS, AND ACORDIA
NORTHWEST, INC.

Cross-Defendants.

Case No.: CV04 00364 ACK BMK

**ACORDIA NORTHWEST INC.'S
OPPOSITION TO PLAINTIFF'S
PETITION FOR DETERMINATION
OF GOOD FAITH SETTLEMENT**

Action filed: June 10, 2004

SCANNED

I. THE CONFIDENTIALITY PROVISION IN THE SETTLEMENT AGREEMENT BETWEEN PLAINTIFF AND WATKINS SYNDICATE IS IMPROPER BECAUSE IT UNREASONABLY PREVENTS OTHER NON-SETTLING PARTIES FROM UTILIZING IT IN THIS MATTER.

Defendant Acordia Northwest, Inc. ("Acordia") hereby opposes Plaintiff's Petition for Determination of Good Faith Settlement under H.R.S. § 663-15.5 because the confidentiality provision in the Settlement Agreement ("Agreement") between Plaintiff Paradise Cruise Limited, ("Plaintiff") and Watkins Syndicate unreasonably restricts the non-settling parties' right to usage of the terms of the Agreement insofar as they relate to the instant matter.

Federal courts have repeatedly required the production to non-settling defendants of otherwise confidential settlement agreements between plaintiffs and other defendants in the same cases. See, e.g., *White v. Kenneth Warren & Son, Ltd.*, 203 F.R.D. 364 (N.D. Ill. 2001) (compelling settling party to disclose terms of settlement agreement under protective order); *Bennett v. La Pere*, 112 F.R.D. 136 (D.R.I. 1986) (ordering settling party to disclose to defendant hospital confidential settlement agreement between medical malpractice plaintiffs and defendant physicians). Those cases analogized the disclosure of settlement terms to non-settling parties to insurance disclosure requirements of Federal Rule of Civil Procedure 26(a)(1)(D) because, like insurance disclosures, settlement agreement disclosure would allow the non-settling parties "to enter settlement negotiations and formulate a litigation strategy without speculating as to whether its potential liability has been partially satisfied." *White* at 367.

Both courts noted the policy considerations of disclosing settlement terms to non-settling parties, which include fostering settlement talks and promoting judicial economy. *Id.*; *Bennett* at 138-39.

Here, the confidentiality provision (subsection "VI") in the Agreement provides, in relevant part:

1 the limited purposes of this case, not to be disclosed to other persons unrelated to the
2 instant action.

3 Dated: January 6, 2006

4 WILSON, ELSER, MOSKOWITZ, EDELMAN &
5 DICKER LLP

6 By: Mark L. Cohen for JST

7 James L. Boughey
8 Jeffrey S. Tachiki
9 Attorneys for Cross-Defendant
10 **ACORDIA NORTHWEST, INC.**
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PROOF OF SERVICE

I am a citizen of the United States, I am over the age of eighteen years not a party to the within cause; I am employed in the City and County of San Francisco, California and my business address is 650 California Street, 14th Floor, San Francisco, California 94108. On this date I served the following documents:

ACORDIA NORTHWEST INC.'S OPPOSITION TO PLAINTIFF'S PETITION FOR DETERMINATION OF GOOD FAITH SETTLEMENT

on the party(ies) identified below, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below by the following means of service:

 : **By First Class Mail** – I caused each such envelope, with first class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. Mail in San Francisco, California, for collection to the office of the addressee following ordinary business practices.

 : **By Personal Service** – I caused each such envelope to be given to a courier messenger who personally delivered each such envelope to the office of the address.

XX: By Federal Express – I caused each such envelope to be given to Federal Express at San Francisco, California, to be hand delivered to the office of the addressee within 3 to 4 business days.

 : **By Facsimile** – The document was sent via facsimile to the facsimile numbers listed below each addressee on this proof of service.

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1 I declare under penalty of perjury under the laws of the State of California that
2 the forgoing is true and correct to the best of my knowledge.

3 Executed January 6, 2006, at San Francisco, California.

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5 Violet Rajkumar
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